

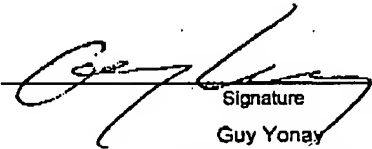
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) P-5476-US	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		Application Number 10/695,847	Filed October 30, 2003
		First Named Inventor GLUKHOVSKY, Arkady	
		Art Unit 3739	Examiner SMITH, PHILIP ROBERT
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>52,388</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		 Signature Guy Yonay Typed or printed name (646) 878-0800 Telephone number July 17, 2007 Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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JUL 17 2007

Attorney Docket No.: P-5476-US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): GLUKHOVSKY, Arkady et al. Examiner: SMITH, PHILIP ROBERT

Serial No.: 10/695,847 Group Art Unit: 3739

Filed: October 30, 2003

Title: DEVICE AND METHOD FOR BLOCKING ACTIVATION OF AN IN-VIVO SENSOR

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Pre-Appeal Brief Request for Review is submitted together with a Notice of Appeal in response to the final Office action dated March 19, 2007 issued by the United States Patent and Trademark Office in connection with the above-identified Application. A response to the March 19, 2007 final Office action is due June 19, 2007. A Petition for One-Month Extension of Time is being filed herewith. Accordingly, this Pre-Appeal Brief Request for Review is being timely filed.

Kindly consider the following remarks:

Remarks/Arguments begin on page 2 of this paper.

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REMARKS

I. Introduction

In the Office Action, the Examiner rejected claims 1-3, 8, 10, 12-15, 17-18, 20, 25, and 27-30 under 35 U.S.C. § 103(a), as being unpatentable over Gazdinski (US Patent Application Publication No. 2001/0051766) in view of Denen, et al. (US Patent No. 5,400,267).

Additionally, the Examiner rejected claim 19 as being unpatentable over Gazdinski (US Patent Application Publication No. 2001/0051766) in view of Kane, et al. (US Patent No. 6,204,746).

With all due respect, Applicants disagree with the Examiner's final rejection. As discussed below, Applicants believe that there are omissions of elements essential for a prima facie case, as well as errors in the Examiner's rejection. In particular, the references cited – even if combined – do not teach the totality of the pending claims. Accordingly, the pending claims recite novel and non-obvious subject matter, and are therefore allowable over the art of record.

II. At Least One Claim Element Is Clearly Not Present In The Cited References

Applicants respectfully point out that at least one element recited in claim 1 is entirely absent from the cited references. Claim 1 is reproduced below, wherein the element to which no art has been applied is highlighted:

1. A self-contained in-vivo device comprising an internal battery; a wireless transmitting device; and an operation blocker disposed therein, wherein said operation blocker is for permanently preventing activation of said device after a specified threshold level is exceeded in a parameter from a list comprising: time of operation, voltage level of a power source, in-vivo Ph level, in-vivo pressure and number of image frames.

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Specifically, neither Gazdzinski nor Denen teaches permanently disabling activation of the device. As the Examiner concedes, Gazdzinski does not disclose permanently disabling the device. On the contrary, Gazdzinski discloses that “[w]hen all data acquisition is complete, the probe is deactivated (such as by simply powering it down) in step 1522.” (paragraph [0208], emphasis added). Gazdzinski therefore does not disclose permanent deactivation. Therefore, Gazdzinski does not teach or suggest “said operation blocker is for permanently preventing activation of said device after a specified threshold level is exceeded . . .”, as recited in amended independent claim 1.

Next, Denen discloses that “the control module compares the utilization history during each use, and disables the equipment if a utilization limit is exceeded.” (Abstract). However, Denen also does not disclose permanent deactivation. On the contrary, Denen explicitly indicates that the activation is not permanent by disclosing that “control module 36 may be programmed to write a fault status flag to non-volatile memory 30, to prevent any future attempts at using equipment 31 until it has been serviced. It is contemplated that the fault status flag will be interrogated by control module 36 immediately after equipment 31 is energized, and if set, will result in control module 36 disabling power supply module 39” (column 10, line 11-18, emphasis added) and “control module 36 disables power supply module 39 so that equipment 31 cannot be used until serviced” (column 12, line 51-53, emphasis added).

Moreover, the mechanism disclosed by Denen to disable operation is clearly and inherently a temporary one. Denen discloses that “[i]f the total actuation count equals or exceeds 150, control module 36 sends a disabling message to power supply module 39. Power supply module 39, the circuitry of which may otherwise be a conventional power source for use with electrically powered surgical equipment, will not supply power to equipment 31 upon receipt of a disabling message from control module 36.” (column 11, lines 20-27, emphasis added). Therefore, it is clear that the power supply in Denen is simply turned off upon receiving a disabling message. The device is not altered in any way, nor is it permanently disabled.

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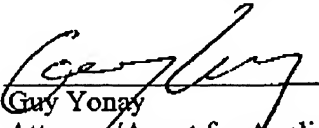
Therefore, neither Gazdzinski nor Denen, alone or in combination, teach or suggest "said operation blocker is for permanently preventing activation of said device after a specified threshold level is exceeded in a parameter from a list comprising: time of operation, voltage level of a power source, in-vivo Ph level, in-vivo pressure and number of image frames", as recited in amended independent claim 1. It would not be obvious to include "said operation blocker is for permanently preventing activation of said device after a specified threshold level is exceeded in a parameter from a list comprising: time of operation, voltage level of a power source, in-vivo Ph level, in-vivo pressure and number of image frames" in Gazdzinsky in view of Denen. In fact, both Gazdzinsky and Denen teach away from "permanently preventing activation".

III. Conclusion

Thus, neither Gazdzinski nor Denen, alone or in combination, teach or suggest the invention of claim 1, nor is there evidentiary basis for a 103 motivation provided in the rejection. Accordingly, Applicants respectfully assert that amended independent claim 1 is allowable.

In view of the foregoing amendments and remarks, the pending claims are deemed to be allowable. Their favorable reconsideration and allowance is respectfully requested.

Respectfully submitted,


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Dated: July 17, 2007

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